Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 4 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
	)	
Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption From End User Common Line Access Charges	)	RM 8723

AMERITECH COMMENTS

The Ameritech Operating Companies (Ameritech) hereby comment on the above-captioned petition for rulemaking filed by the American Public Communications Council (APCC) in which APCC asks the Commission to change its rules so that independent payphone providers (IPPs) no longer must pay the end user common line (EUCL) charge. For the reasons discussed below, APCC's petition should be denied.

As APCC acknowledges in its petition, APCC is seeking a rule change in light of the Commission's decision in C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc., (the CFC Order).[1] In that decision, the Commission affirmed a Common Carrier Bureau holding that CFC, an IPP, is subject to EUCL charges. In so finding, the Commission determined, inter alia, that CFC is a resale carrier whose resale transmissions originate entirely

1 FCC 95-351, (released Sept. 6, 1995).

on its own premises. The Commission found that, as such, CFC was liable for EUCL charges, both as a matter of law and equity. In explaining why resellers are assessed EUCL charges, the Commission stated:

> the Commission has long recognized that resellers such as hotels, which provide their communications services solely at their own premises, should be treated as end users and assessed the EUCL charge. Such resellers generally offer service to transient callers who do not themselves have any subscription agreement with the LEC for the line being used. In such a situation, the reseller, as an "identifiable business end user," is assessed the EUCL charge and thereby stands in the place of the transient caller who is the actual "cost causer" in a sense and from whom that charge would be unrecoverable. Moreover, while the caller is a "cost causer" by using the line, the "identifiable business end user" is also a "cost causer" in that it orders the local lines so that it may provide them, as part of its business, to the actual callers. Hence, under the cost causation principle, it is equitable for a reseller whose resale transmissions originate entirely on its "premises" to bear the EUCL charge.[2]

The Commission found no reason to treat CFC differently from any other reseller. On the contrary, the Commission found that the same considerations in law and equity applied to CFC:

> Because the end user portion of the local loop costs cannot be recovered from [the transient caller who uses CFC's payphone], it must be recovered from the "identifiable business end user," CFC, who acts as a surrogate for the transient caller. Further, as we have noted more generally above, CFC, as the subscriber, orders the local lines from the LEC so that those lines may be used for CFC's payphone business. In this different sense, CFC is, in fact, a cost causer. To find otherwise would be to shift the end user portion of the costs of CFC's lines to other persons or entities that can in

---

2 CFC Order at para. 12.

> no way be considered responsible for causing such costs, a result we consider inequitable in this situation.[3]

In asking the Commission to change its rules to exempt IPPs from EUCL charge assessments, APCC ignores that the CFC Order was based on considerations of both law and equity. As the Commission recognized, exempting IPPs from EUCL charges would result in a discriminatory access charge regime that favors IPPs over other resellers who originate resale traffic from their own premises. These other resellers would continue to pay the EUCL charge, while IPPs would not. Indeed, insofar as IPP EUCL costs would be folded into the carrier common line (CCL) charge, other resellers, including aggregators that serve as IPP competitors, would be forced to subsidize IPP operations. The Commission specifically found that such a result would be "inequitable."

APCC claims that IPPs nevertheless should be treated differently from other resellers who originate resale traffic from their own premises. It argues that, like local exchange carrier (LEC) payphones, IPP payphones are used by the general public, rather than a single end user and that, consequently, the policy reasons underlying the "public telephone exception" for LEC payphones applies equally to IPPs.

This argument, however, misrepresents the reasons underlying the public telephone exception for LEC payphones. The basis for the public

---

3 CFC Order at para. 16 ("To find [that CFC need not pay EUCL charges] would be to shift the end user portion of the costs of CFC's lines to other persons or entities that can in no way be considered responsible for causing such costs, a result we consider inequitble in this situation.")

telephone exception is not simply that LEC payphones are used by the general public, rather than a particular end user. That fact explains only why EUCL charges could not be practically assessed on those who use LEC payphones to make interstate calls. It does not explain why those charges are recovered through usage-based charges imposed on interexchange carriers, rather than from LEC payphone operations. The reason for that -- which APCC ignores in its petition -- is that LEC interstate payphone operations are fully integrated with LEC local exchange operations. Because of this integration, it would not be possible to recover the interstate costs of LEC payphone lines from LEC payphone operations: any payments would be strictly paper transactions, with no transfer of value.

On the other hand, there is no reason why IPPs should not pay EUCL charges. IPPs are not integrated with LEC local exchange operations. They are customers of the LEC. As the Commission has recognized, they order common lines from the LEC for their payphone business and are thus "cost causers." In this respect, they are more like other resellers who pay EUCL charges for the LEC lines they procure for their business than they are like LEC payphone operations.

APCC argues that it is discriminatory to assess the CCL charge on IPPs but not LEC payphone operations, and that this practice harms competition. This argument, however, ignores the many competitive advantages that IPPs currently enjoy over LEC payphones. The most significant of these advantages is that IPPs are not subject to the equal access requirements of the Modification of Final Judgment. IPPs can jointly market their payphone service with the operator service provider of their choice. Consequently, they are able to leverage their control of payphones into substantial commission payments from operator service providers. The Bell Operating Companies and GTE, on the other hand, are prohibited from partnering with any IXC. As a result, LECs receive no commission payments from operator service providers presubscribed to their pay telephones. This advantage enjoyed by IPPs is significant and more than compensates for any disadvantage an IPP faces by virtue of having to pay EUCL charges. Indeed, because of this advantage, competition would be harmed, not by retaining the current EUCL rules, but by exempting IPPs from the obligation to pay EUCL charges.

Finally, APCC's request could complicate Commission efforts to establish more efficient recovery mechanisms for LEC interstate payphone costs. Ameritech and Southwestern Bell have both filed petitions to remove interstate pay telephone costs from the CCL and to recover such costs, instead through a new per-call charge on interexchange carriers that receive interstate traffic originating from their payphones.[4] As explained in Ameritech's Petition and Reply, its proposed per-call use fee would be a far more efficient mechanism for recovering interstate pay telephone costs than existing Part 69 rules. It would directly tie payphone charges to payphone usage and thereby further the Commission's policy of recovering costs from cost causers. In addition, it would create proper incentives for the placement of pay telephones at locations where the level of traffic justifies the cost of the set.

4 Petition of Ameritech for Waiver of Part 69 of the Commission's Rules to Restructure its Rates to Establish a Pay Telephone Use Fee Rate Element, DA-1028, filed April 26, 1995 (Ameritech Set Use Fee Petition); Petition of Southwestern Bell Telephone Company for Waiver of Part 69 of the Commission's Rules to Restructure its Rates to Establish a Pay Telephone Use Fee Rate Element, DA-1328, June 7, 1995.

These benefits were acknowledged by APCC, which supports Ameritech's petition.[5]

Under APCC's proposal, however, IPP line costs would be folded into the CCL charge. Thus, whereas the costs of Ameritech's payphone lines would be assessed solely on carriers receiving calls from Ameritech payphones based on the number of such calls they receive, the costs of IPP lines would be assessed on all interexchange carriers based on their total share of switched access minutes. This would not only be an inefficient way of recovering IPP line costs, it would skew the marketplace by incenting interexchange carriers to use IPP payphones, rather than Ameritech payphones. In particular, an interexchange carrier receiving a call from an Ameritech payphone would be charged a set use fee for the cost of the payphone and payphone line, as well as the CCL charge, which would include the cost of the IPP line. On the other hand, an interexchange carrier receiving a call from an IPP phone would be charged only the CCL charge. Thus, far from establishing a competitively neutral access charge regime, as APCC contends, APCC's proposal would result in an imbalanced regime wherein Ameritech payphones subsidize IPP phones.

In sum, rather than creating a level playing field, APCC's proposal would skew the marketplace by treating IPPs differently from other resellers and by conferring competitive advantages on IPPs vis-a-vis LEC pay telephones. Moreover, APCC ignores critical distinctions between LEC pay

---

5 APCC Comments on Ameritech Set Use Fee Petition, June 5, 1995. In its comments, APCC states: "Ameritech correctly states that recovery of payphone costs by means of a per-call charge on each call originating from the payphone better serves the public interest than recovery of payphone costs from charges applied to all switched traffic." Id. at 1.

telephones and IPP phones in arguing that the reasons for not assessing EUCL charges on LEC pay telephone operations apply equally to IPPs. Therefore, APCC's petition is fundamentally flawed and should be denied.

Respectfully Submitted,

Gary L. Phillips

Gary L. Phillips
Counsel for Ameritech
1401 H Street, N.W. Suite 1020
Washington, D.C. 20005
(202) 326-3817

December 4, 1995

CERTIFICATE OF SERVICE

I, Karen A. Kuhn do hereby certify that a copy of the foregoing Comments of Ameritech has been served on the party listed below, by first class mail, postage prepaid, on this 4th day of December, 1995.

By: Karen A. Kuhn

Karen A. Kuhn

Albert H. Kramer
Robert F. Aldrich
David B. Jeppsen
Attorneys for American Public
Communications Council, Inc.
Keck, Mahin & Cate
1201 New York Avenue
Penthouse Suite
Washington, D.C. 20005-3919